

STATE OF MICHIGAN
COURT OF APPEALS

JAMES MARTIN and LUCIA MARTIN,

Plaintiffs-Appellants,

v

SMG,

Defendant/Cross-Defendant/Third-
Party Plaintiff-Appellee,

and

GRAND RAPIDS-KENT COUNTY
CONVENTION AREA AUTHORITY,

Defendant/Cross-Plaintiff/Third-
Party Plaintiff-Appellee,

and

GRAND RAPIDS BALLET COMPANY, d/b/a
GRAND RAPIDS BALLET,

Third-Party Defendant.

UNPUBLISHED

May 24, 2007

No. 273528

Kent Circuit Court

LC No. 04-008611-NI

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Lucia Martin¹ was a professional ballerina employed by the Grand Rapids Ballet Company ("Ballet Company"). In 2001, she was injured during a rehearsal of the ballet *Dracula*

¹ Because James Martin's claims are entirely derivative of Lucia Martin's claim, the singular
(continued...)

when a portable staircase used in the performance collapsed as she ascended it with a stagehand, Drew Nikodem. The staircase was designed and built by employees of the Ballet Company. It was mounted on casters for easy movement and the casters were designed to be retracted when the staircase was moved into place. SMG, the manager of the theater, hired the stagehands who were responsible for moving and installing the staircase on stage for performances.

Plaintiffs brought this action for negligence against SMG and the owner of the theater, Grand Rapids-Kent County Convention Area Authority (“Authority”), alleging that the stairway collapsed because the stagehands hired by SMG failed to retract the casters, leaving the staircase unsecured. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no evidentiary support for plaintiffs’ theory that the casters were not retracted, and that the available evidence instead showed that the hinges attached to the staircase failed, and that this failure was attributable to the Ballet Company. The trial court agreed with defendants and granted their motion.

We review a trial court’s decision on a motion for summary disposition de novo. *Reed v Breton*, 475 Mich 531, 537; 718 NW2d 770 (2006). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). The trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Reed, supra*. The moving party is entitled to judgment as a matter of law if the proffered evidence fails to establish a genuine issue of any material fact. *Id.*

To prove a prima facie case of negligence, plaintiffs must prove (1) a duty; (2) a breach; (3) injury or damages; and (4) causation. *Brown v Brown*, 270 Mich App 689, 693; 716 NW2d 626 (2006). Although plaintiffs alleged that SMG’s stagehands breached a duty of care and caused her injuries by failing to retract the staircase’s casters when they moved it into place, plaintiffs presented no evidence in support of this theory other than that it was a possible explanation for the cause of the staircase collapsing.

As our Supreme Court explained in *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994):

[A] causation theory must have some basis in established fact. However, a basis in only slight evidence is not enough. Nor is it sufficient to submit a causation theory that, while factually supported, is, at best, just as possible as another theory. Rather, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant’s conduct, the plaintiff’s injuries would not have occurred. [*Id.* at 164-165.]

In *Skinner*, the Court acknowledged that the plaintiff presented a plausible theory regarding a logical sequence of events where a defective switch could have caused the decedent’s death. *Id.* at 171-172. However, the Court concluded that this was merely a “possibility” among countless others, which was insufficient to survive summary disposition. *Id.* at 172.

(...continued)

“plaintiff” is used to refer to Lucia Martin.

The testimony of Randy DeBoer, the Ballet Company's technical director who designed the staircase, established that plaintiff's accident might have been caused by the stagehands' failure to retract the casters. However, plaintiff failed to present evidence showing that this explanation was anything more than a possibility. There was no evidence that the casters were, in fact, not retracted. No witness testified that they saw the position of the casters before the staircase collapsed, and DeBoer stated that the position of the casters before the collapse could not be determined from the physical evidence. No witness testified that the staircase rolled, or that the collapse occurred in a way that was more consistent with a caster error than a hinge failure.

Plaintiffs also rely on a statement allegedly made by Nikodem in which he told plaintiff Lucia Martin, "It's my fault." Plaintiffs did not submit documentary evidence of this statement, however, and their undocumented assertion cannot be used to establish a question of fact under MCR 2.116(C)(10). MCR 2.116(G)(4); *Reed, supra* at 537. Moreover, even if plaintiffs had submitted documentary evidence of this statement, it would not preclude summary disposition. The statement is too vague, general, and equivocal to show that the accident was caused because the casters were not retracted.

Accordingly, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Henry William Saad
/s/ Christopher M. Murray